

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	
)	Cr. No. 6:03-1092-HMH
)	
vs.)	OPINION & ORDER
)	
Ricky A. Carter,)	
)	
Movant,)	
)	
Eric Rivera,)	
)	
Defendant.)	

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit. On March 14, 2008, Ricky Carter (“Carter”) filed a motion to compel the government to file a motion for downward departure based on an alleged cooperation agreement pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. The court denied Carter’s motion on March 17, 2008.

On October 31, 2008, the Fourth Circuit remanded this matter for the court to “first consider whether it has jurisdiction to consider Carter’s motion” and if the court finds that it has jurisdiction, to then “instruct the Government to respond to Carter’s motion and proceed accordingly.” See United States v. Rivera, No. 08-6474, at *1 (4th Cir. Oct. 31, 2008) (unpublished).

This court is without jurisdiction to consider Carter’s motion to compel. A Rule 35(b) motion must be filed in the sentencing court. United States v. Francois, 889 F.2d 1341, 1345 (4th Cir. 1989). Rule 35(b) “is intended to give every convicted defendant a second round

before the sentencing judge and also gives the judge an opportunity to reconsider the sentence in light of any further information about the defendant or the case which may have been presented to him in the interim.” United States v. Cotton, 586 F. Supp. 199, 200 (E.D. Wis. 1983). In other words, it “offers the sentencing court an opportunity to temper its original sentence.” United States v. Distasio, 820 F.2d 20, 24 (1st Cir. 1987).

Likewise, a motion seeking to compel the government to file a Rule 35(b) motion must be filed in the sentencing court. According to Carter’s motion, he is currently serving a federal sentence. Based on a review of his electronic docket in case number 1:03-CR-636-1 in the United States District Court for the Northern District of Georgia, Carter was sentenced on January 5, 2006, to 25 years’ imprisonment for conspiracy to commit robbery under 18 U.S.C. § 1951(a) and use of a firearm during the commission of a crime of violence under 18 U.S.C. § 924(c)(1)(A). Carter must file this motion with the Northern District of Georgia.

Therefore, it is

ORDERED that this motion is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
November 3, 2008

NOTICE OF RIGHT TO APPEAL

Movant is hereby notified that he has the right to appeal this order within ten (10) days from the date hereof, pursuant to Rule 4 of the Federal Rules of Appellate Procedure.